

UTILITIES AND TRANSPORTATION COMMISSION STAFF  
RESPONSE TO BENCH REQUEST

DATE PREPARED: March 12, 2019  
DOCKET: TS-180677  
REQUESTER: Bench

WITNESS: Mike Dotson  
RESPONDER: Mike Dotson  
TELEPHONE: (360) 664-1223

**BENCH REQUEST NO. 3:**

On March 1, 2019, the Commission received an application to transfer authority to operate passenger, freight and ferry service on Lake Chelan under Certificate BC000034 from Lake Chelan Recreation, Inc., d/b/a Lake Chelan Boat Company, to Discover Lake Chelan LLC, Docket TS-190146.

Please explain on behalf of each party what, if any, impact the above-referenced application to transfer authority has on this proceeding. If there is an impact, how should it be considered by the Commission in this proceeding?

**RESPONSE:**

Staff does not see the application to transfer authority as impacting this proceeding. Lake Chelan Boat Company withdrew its protest to Backcountry Travels LLC's application and also withdrew as a party from this proceeding. The transfer of application does not affect its decision to do so because Discover Lake Chelan LLC will take the certificate subject to Lake Chelan Boat Company's decision to withdraw the exercise of its statutory rights.

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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of

NO. TS-180677

BACKCOUNTRY TRAVELS LLC

BACKCOUNTRY TRAVELS, LLC'S  
RESPONSE TO BENCH REQUEST NO.  
3 RE: TS-190146 APPLICATION TO  
TRANSFER AUTHORITY TO  
OPERATE PASSENGER, FREIGHT  
AND FERRY SERVICE ON LAKE  
CHELAN

For a Certificate of Public Convenience  
and Necessity to Operate Vessels in  
Furnishing Passenger Ferry Service

**I INTRODUCTION**

1 On March 5, 2019, Honorable Administrative Law Judge Andrew J. O'Connell issued  
2 Notice of Bench Request No. 3 in the above entitled proceedings. Judge O'Connell requested  
3 explanation on behalf of all parties what impact, if any, the application to transfer authority  
4 from Lake Chelan Recreation, Inc. d/b/a Lake Chelan Boat Company (LCRI), to Discover Lake  
5 Chelan, LLC, (Discover) should have on the proceeding. The Court further instructed the  
6 parties to explain how they feel the above referenced application should be considered by the  
7 Commission in this proceeding should it believe that it has an impact on the same. As directed  
8 by Judge O'Connell, Backcountry Travels, LLC (Backcountry) submits this Response.

BACKCOUNTRY TRAVELS, LLC'S OBJECTION TO LAKE  
CHELAN RECREATION, INC.'S MOTION TO WITHDRAW  
PROTEST  
Page 1 of 6  
4631258

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1 **II IMPACT OF APPLICATION**

2 The application to transfer authority has a direct impact on these proceedings.  
3 Backcountry believes that this impact will ultimately be positive for both this proceeding  
4 and travelers up lake. This application by Discover is part of the beginning of an exciting  
5 new era for transportation on Lake Chelan. An era of new ideas and cooperation in order  
6 to better serve the public. Backcountry fully supports this application to transfer operating  
7 authority to Discover. Transferor LCRI has now not only withdrawn as a party to these  
8 proceedings, it is now divesting itself of its interests in the future operations of a ferry on  
9 Lake Chelan. LCRI was the only protesting party in these proceedings. As Backcountry  
10 pointed out in its Objection to Withdrawal submitted in response to LCRI’s motion for  
11 withdrawal, but for LCRI’s protest, the need for adjudicative proceedings may not have  
12 arisen. LCRI submitted its testimony as to why Backcountry’s application should be denied  
13 based on its stated concerns and dire predictions about the impact to its business operations.  
14 As LCRI no longer intends to operate their business it is submitted that their entire  
15 testimony should be disregarded as no longer relevant.

16 The fact that these proceedings were pending is something that is known to  
17 prospective transferee Discover. Despite the pendency of this application, the knowledge  
18 of the overwhelming public support that exists for this application and having been made  
19 aware of the fact that the testimony submitted by the Commission supports the application,  
20 Discover still seeks to secure authority to operate the ferry service on Lake Chelan. While  
21 we do not know the specific financial details of the sale of the assets of LCRI to Discover,  
22 it is reasonable to assume that the investment by Discover is significant. It is illogical that  
23 a decision to move forward with a purchase of this magnitude while the application is  
24 pending would have been made had Discover not believed that continued operation of the

1 current ferry service was viable regardless of the outcome of this proceeding.

2 Perhaps the most important reason that the transfer application impacts these  
3 proceedings is because a member of Discover authored one of the 227 statements in support  
4 of Backcountry's application. Reed Courtney signed his statement in support of the  
5 application on September 4, 2018. He stands by that statement now. In his statement  
6 Mr. Courtney echoes those sentiments shared by so many of the other supporters: need for  
7 year-round daily service; necessity for additional commuting options; the negative impact  
8 that the current service has on economic development in the Stehekin Valley; the necessity  
9 of private persons to find costly alternatives to the current service to meet their individual  
10 needs. The fact that these opinions are those of one of the member's of the entity seeking  
11 to take over and continue to operate the existing service has a major impact on this  
12 proceeding.

### 13 **III CONSIDERATION OF TRANSFER APPLICATION BY COMMISSION**

14 It is submitted that the Commission should consider the transfer application in  
15 multiple ways. First, it should be considered as evidence which undermines, substantially  
16 nullifies, and renders irrelevant the testimony submitted by LCRI. While it remains the  
17 position of Backcountry that its application does not rest singularly on the principles of  
18 free economics, the economic decision making of Discover speaks volumes. The testimony  
19 from LCRI focused on business forecasts and projections based on their operations.  
20 Clearly Discover believes otherwise enough to make a significant investment in taking over  
21 those operations despite Backcountry's application. It is submitted that the beliefs of  
22 Discover should be considered much more important to the Commission than what has  
23 been offered previously by LCRI.

24 Second, it should be considered as being indirectly the strongest statement in

1 support of Backcountry's application considering the timing of the submission and the fact  
2 that one of the members of Discover has individually articulated his belief that the services  
3 to be provided by Backcountry are necessary to meet the public need and convenience as  
4 well the fact that the current service fails to do so.

5 Lastly, it should be considered as evidence that the operation of two ferry service  
6 providers on Lake Chelan is economically viable. If this were not the case, it is submitted  
7 that Discover would have at the very least awaited the outcome of these proceedings before  
8 moving forward with its acquisition of authority to operate under Certificate BC000034.  
9 Instead, they have demonstrated through actions that the viability of their continued  
10 operation of ferry services on Lake Chelan is not dependent on the outcome of this  
11 application. It should further be considered as evidence that granting the application of  
12 Backcountry would only enhance the level of services offered to the public in relation to  
13 access to Lake Chelan, not diminish them.

#### 14 IV CONCLUSION

15 The impact and importance of the application to transfer authority, particularly at  
16 this point in the proceeding, cannot be overstated. Both parties to these proceedings are  
17 testifying that the application should be granted. Now, the successor in interest to the  
18 former party who protested the application, has demonstrated by corporate action and  
19 individual submission of one of its members that the application should be granted based  
20 on public need, convenience and the failure of the current service to meet the same. The  
21 2010 Commission Report comes from a different time and different circumstances. The  
22 focus of the 2010 report was to address whether or not the UTC should continue to regulate  
23 ferry service on Lake Chelan. Backcountry's application comes at a time where the  
24 interests of those persons who are to be protected and served by the Commission could not

1 be more clearly aligned in support of its request. The application to transfer authority  
2 should be considered the last possible piece of evidence needed to confirm that the  
3 Backcountry should be allowed to give the public what it wants, needs and should be  
4 entitled to on Lake Chelan.

5 DATED the \_\_\_\_ day of March, 2019.

6 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

7  
8 By /s/ Jordan L. Miller  
9 JORDAN L. MILLER, WSBA #38863  
10 MATTHEW S. HITCHCOCK, WSBA # 38863  
11 Attorneys for Applicant Backcountry Travels, LLC  
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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 12th day of March, 2019, the foregoing was delivered to the following persons in the manner indicated:

<p>Andrew Richards Hathaway Burden Garvey Schubert Barer, P.C. 1191 Second Avenue, Suite 1800 Seattle, WA 98101-2939</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery – Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:arichards@gsblaw.com">arichards@gsblaw.com</a> <a href="mailto:hburden@gsblaw.com">hburden@gsblaw.com</a> <a href="mailto:kmuller@gsblaw.com">kmuller@gsblaw.com</a></p>
<p>Jeff Roberson Harry Fukano Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery – Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email : <a href="mailto:jeff.roberson@utc.wa.gov">jeff.roberson@utc.wa.gov</a> <a href="mailto:Harry.fukano@utc.wa.gov">Harry.fukano@utc.wa.gov</a></p>

/s/ Jerei Bargabus  
JEREI BARGABUS